

DOCKET SECTION

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PRESIDING OFFICER'S
RULING NO. R97-1/62

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268

Postal Rate and Fee Changes

Docket No. R97-1

**PRESIDING OFFICER'S RULING GRANTING IN PART
UPS MOTION TO COMPEL RESPONSES TO
ADDITIONAL INTERROGATORIES CONCERNING
PMPC CONTRACT AND SPECIFYING PROTECTIVE
CONDITIONS OF ACCESS BY INTERESTED PARTIES**

(November 17, 1997)

This ruling addresses the latest phase of an ongoing controversy between the Postal Service and United Parcel Service concerning access to the Priority Mail Processing Center (PMPC) contract between the Service and Emery Worldwide Airlines, Inc. (hereafter referred to as "Emery"). In an earlier attempt to reach an informal resolution, the Postal Service filed a redacted version of the contract with the Commission as a library reference on August 28, 1997.¹

On September 11, UPS directed its eighth set of interrogatories and discovery requests to witness Sharkey, most of which referred to LR-235 and sought additional information regarding details of the PMPC contract. The Postal Service objected to 10 of these discovery requests, or parts thereof, on September 22, primarily on the

¹ In Presiding Officer's Ruling R97-1/12, I noted with approbation the parties' efforts to resolve the discovery dispute by informal means, and directed UPS to file any motion for production of additional information by September 8. In response to a motion of UPS for an indefinite extension of time in which to submit a motion to compel the Postal Service to produce a more complete version of the PMPC contract, Presiding Officer's Ruling R97-1/16 suspended the earlier deadline in light of the apparent prospects for an informal resolution of the controversy.

grounds of consequent harm to significant commercial interests of both the Service and Emery, as well as to the integrity of the Service's procurement process, but also because some of the information sought purportedly has no direct relevance to the Service's test year costs under the contract, and thus little relevance to this proceeding. Despite its serious objections, the Postal Service expressed its willingness to consider providing the requested information under considerably more stringent protective conditions than those customarily prescribed in Commission proceedings.²

United Parcel Service moved to compel production of information requested in eight interrogatories, or parts thereof, on October 6.³ The categories of information requested range from the general (estimated portion of the total contract price to be paid by the Service that relates to test year operations of the PMPC network, requested in UPS/USPS-T33-58) to the highly specific (e.g., estimated amount of aviation and diesel fuel cost to be passed through during the Ramp-Up period and Period 1 of the contract, requested in UPS/USPS-T33-50). Most of the items requested pertain to specific cost elements and average prices under the contract.

In its Motion to Compel, UPS argues that the requested information is highly relevant to the proceeding, is similar to other transportation contract information the Postal Service has already produced in the case, and is by no means proprietary or confidential in character. UPS emphasizes that it has no interest in discovering

² Although it is not a party to this proceeding, Emery Worldwide filed a document captioned "Informal Expression on Release of Proprietary and Confidential Information to UPS" on September 26. In its pleading, Emery argues that a company such as UPS that seeks access to a competitor's trade secrets or confidential and proprietary business information may be allowed to do so only under very limited circumstances; that when such information must be disclosed in litigation, courts and administrative agencies routinely enter a protective order precluding from access anyone who could use it to gain an unfair competitive advantage; and that in view of the potential for competitive harm to Emery, the information requested in the UPS interrogatories should only be disclosed under a protective order of the type used by the General Accounting Office, federal district courts, and other federal entities to limit access, retain discretion over access, and ensure control of the documents transmitted.

³ Motion of United Parcel Service to Compel Production of Information and Materials Requested in Interrogatories UPS/USPS-T33-44(b)-(c), 45(e)-(h), (m)-(p), 47(e)-(h), (m)-(p), 48-50, and 57-58 to Postal Service Witness Sharkey, October 6, 1997.

information concerning Emery's costs, but only seeks information bearing on the costs of the PMPC contract that should be recovered by Priority Mail. According to UPS, the requested information constitutes the best evidence of what a substantial portion of Priority Mail costs will be, and is superior to roll-forward estimates. By producing the same type of cost and volume information in other contracts,⁴ UPS argues, the Postal Service has demonstrated that its claims of confidentiality with respect to the PMPC contract are specious. Moreover, UPS argues, the Service's claims of proprietary business information with respect to the requested materials are excessive in scope, and the protective conditions proposed in Emery's filing are unwarranted, grossly excessive, and unduly burdensome upon parties seeking access. For these reasons, UPS claims that the Postal Service should be ordered to produce the requested information and materials within seven days, without any associated protective conditions.

In its Opposition filed October 14, the Postal Service challenges UPS' arguments and reiterates its claim that stringent protective conditions would be required in connection with the production of responsive information. First, the Service disputes UPS' claim that each of its interrogatories is carefully designed to elicit only information relating to the Postal Service's costs under the contract, arguing that some of the information sought—in particular, the "air transport cost elements" sought in subparts (m) through (p) of UPS/USPS-T33-45 and -47—are simply "artifacts of the contract negotiation process," and will in no way affect the costs actually to be incurred by the Service under the contract. Opposition at 3.

Second, the Service reiterates the seriousness of its concerns, and those of its contractor Emery Worldwide, regarding the commercial sensitivity of the information sought by UPS. According to the Service, this concern is imperative because the

⁴ UPS specifically cites the WNET network contract submitted as Library Reference H-249 and the TNET network contract submitted as Library Reference H-250 between the Postal Service and Evergreen International Airlines, Inc. and Evergreen Aviation Ground Logistics Enterprises, Inc., respectively.

Service has embarked on a unique and financially significant cooperative business venture with Emery and does not wish to neglect the interests of an important business partner. Additionally, the Service argues that it and the Commission are bound, as federal agencies, by the strictures of the Trade Secrets Act, which bars disclosure of trade secret information by officers and employees of the United States “except as provided by law[.]”⁵ Given the existence of actual competition between Emery and the requesting party, the Service claims that disclosure of the requested information would reveal details of Emery’s pricing strategies for the regions included in the PMPC network, with the likely consequence of competitive injury to Emery’s commercial interests.

In view of the important and sensitive interests at risk in this dispute, the Service argues that, should the UPS motion be granted, production should be made only under the protective conditions suggested by the Service—which it says contain a “very limited addition to the protective conditions customarily used”—or the even more restrictive set of conditions advanced by Emery. Opposition at 7.

Emery filed a Response to the UPS Motion to Compel, together with other materials, on October 14. Initially, Emery argues that the Commission is not the proper forum for conducting an analysis of the propriety of withholding confidential portions of the PMPC contract. Citing the affidavit of Joseph E. Tillman, Director of Finance for an Emery division, Emery claims that revealing the redacted portions of the PMPC contract would disclose pricing strategies, which have been found to be exempt from disclosure under the Freedom of Information Act and the Trade Secrets Act by several judicial authorities. According to Emery, the price variations reflected in the contract’s redacted pricing schedules reflect Emery’s experience in the industry and its analysis of costs and profits on various routes, and disclosing this detailed pricing information would allow UPS, or another competitor, to “infer and predict Emery’s costs for transporting different size pieces between the destinations chosen by Emery[.]” and to

⁵ 18 U.S.C. § 1905.

“estimate and undercut Emery’s bids on other commercial and government air freight contracts—a result prohibited by the FOIA and the Trade Secrets Act.” Response of October 14 at 3-4. Emery further notes that it and the Postal Service have consistently treated the contract as confidential throughout its preparation, negotiation and performance.

Emery also argues that the WNET, TNET and ANET contracts, which UPS identified as contracts that have been disclosed by the Postal Service, are distinguishable because none contains the extensive pricing schedules incorporated in the PMPC contract, nor correlates per-piece units prices to volumes and origin-destination information. Thus, Emery asserts, none would allow the kind of detailed analysis of pricing strategy and discount rates that disclosure of the requested PMPC contract information would enable competitors to conduct, to Emery’s potential competitive detriment.

Finally, Emery argues that its proprietary and confidential information can be adequately protected if disclosed only under protective conditions that will effectively bar access by UPS competitive decision-makers. Emery challenges UPS’s characterization of the protective conditions it proposes as “draconian,” claiming that essentially identical protective orders are used by the General Accounting Office in bids protests, and in federal courts. *Id.* at 6-7.

While evidently supporting with the Service that UPS’s motion to compel be denied, Emery proposes alternatively to release the PMPC contract in its entirety, including its table of contents and the detailed pricing schedules, under the protective conditions it advances. Under Emery’s proposed solution, the Commission would then consider applications for access to the protected material. *Id.* at 7.

Production of Commercially Sensitive Materials in Commission Proceedings. Assertions of privilege in response to interrogatories and other requests for information—including trade secret and commercial sensitivity claims—are not uncommon in discovery practice during formal Commission proceedings. However, in

this controversy, the Postal Service and Emery have presented somewhat unusual arguments that require separate discussion.

Emery and the Postal Service invoke the criminal prohibition in the Trade Secrets Act (18 U.S.C. § 1905) as the source of a potential bar to disclosure of purportedly privileged material in the PMPC contract. Whatever application this provision might have to the production of arguably commercially sensitive information in the legitimate course of formal Commission proceedings (as distinct from the *ultra vires* act of an individual federal employee), it is not dispositive of this controversy.

First, it is far from obvious that the PMPC contract price information which Emery and the Service seek to exempt from disclosure would merit coverage under the Trade Secrets Act. Essentially, this information consists of prices (or components of prices) paid by an agency of the Federal Government to a private company to perform public functions—the transportation and handling of mail matter. The assertion that such information could constitute private commercial information worthy of protection by Federal criminal sanctions is, at the least, slightly bizarre.⁶ This reaction is only fortified by 39 U.S.C. § 5005(b)(3), which apparently imposes an unqualified duty upon the Postal Service to make available for public inspection all contracts for the transportation of mail, by whatever mode. Presumably, any private company interested in bidding on a contract to transport mail has notice of this legally-imposed condition of disclosure.

More importantly here, section 1905 proscribes disclosure of trade secrets and other confidential proprietary information by federal officers and employees “except as provided by law.” Production of information in the course of formal Commission proceedings is authorized generally by 39 U.S.C. § 3624(a), which requires the Commission to provide an “opportunity for a hearing on the record under sections 556 and 557 of title 5[.]” In proceedings conducted under these provisions, parties are

⁶ Or, as one panel in the U.S. Court of Appeals for this Circuit opined, “. . . the idea that a price charged to the Government for specific goods or services could be a ‘trade secret’ appears passing strange . . .” *McDonnell Douglas v. Widnall*, 57 F.3d 1162, 1167 (D.C. Cir. 1995).

entitled "to conduct such cross-examination as may be required for a full and true disclosure of the facts[.]" and in general "[a]ny oral or documentary evidence may be received," with the exception of irrelevant, immaterial, or unduly repetitious evidence. 5 U.S.C. § 556(d).

In more specific terms, 39 U.S.C. § 3624(b) provides that "the Commission may (without limitation) adopt rules which provide for . . . (3) discovery both from the Postal Service and the parties to the proceedings[.]" Pursuant to this grant of authority, the Commission has adopted and employed rules for conducting discovery in its formal proceedings, including a provision authorizing the Commission or Presiding Officer to "compel production of documents or things to which an objection has been raised if the objection is found not to be valid[.]" 39 C.F.R. § 3001.26(d).⁷

Thus, the Postal Reorganization Act directs the Commission to conduct proceedings such as this omnibus rate docket with formal procedures that include affording participants discovery upon the Postal Service and other parties to the case. In complying with this statutory mandate, the Commission has implemented rules that provide for discovery practice and rulings on motions to compel production of evidence, if required in conducting the formal proceeding. Given these statutory and regulatory sources of authority, there can be no serious question as to whether the Commission is authorized to direct the production of information in this proceeding, including commercially sensitive and other potentially privileged information. For this reason, Emery's assertion that the Commission cannot be the arbiter of the privilege it asserts must be rejected; the Postal Reorganization Act and Commission rules require that we do so in conducting this proceeding.

Emery and the Postal Service also argue that, if the PMPC contract pricing information merits exemption from disclosure under Exemption 4 of the Freedom of Information Act as they claim, the inquiry is at an end; the Commission may not release

⁷ The same subsection provides that the Commission or Presiding Officer may direct production "on such terms and conditions as are just and reasonable . . . and may make any protective order . . . as may be appropriate." *Ibid.*

it. However, this conclusion is neither legally compelled nor justified. As the U.S. Court of Appeals for this Circuit recently stated, "the mere fact that information falls within a FOIA exemption does not of itself bar an agency from disclosing the information."⁸

Nor would this approach accord with either the Commission's statutory responsibilities under the Reorganization Act or its past practices in discovery disputes of this kind. In ruling on motions to compel the production of allegedly privileged information in formal proceedings, the Commission must balance the potential competitive harm of disclosure against the strong public interest in favor of empowering each participant to obtain all the evidence needed to prove its case. As the Commission has recognized in past controversies, in accordance with long-established principles governing discovery in civil litigation, evidentiary privileges are exceptions to the general rule that proceedings must be conducted in public view. Concerning the trade secret privilege, in the last omnibus rate case the Commission stated:

With respect to the trade secret privilege, "disclosure rather than protection is the rule because of the overriding interest requiring that each party be empowered to obtain all evidence needed to prove his case." In regulatory proceedings, the privilege is entitled to still less weight because the public interest, as well as rights of private parties, is at stake. The trade secret privilege is a qualified privilege. Whether, and on what terms, protection is to be afforded is for the agency to determine by balancing the harm of disclosure against the party's need to prove his case and the public interest in just and accurate adjudication of disputes. Because of the strong public policy favoring public disclosure, the burden of establishing the applicability of an evidentiary privilege is on the party asserting it.

Order No. 1025, August 17, 1994, at 11. (Footnotes omitted.) In accordance with these doctrines and past Commission practice, the information sought in the UPS motion will be assessed for the balance between apparent relevance and commercial sensitivity in each requested category.

⁸ *Bartholdi Cable Co. v. F.C.C.*, 114 F.3d 274, 281 (D.C. Cir. 1997).

Assessments of Relevance versus Privilege in the Requested Information. UPS asserts that the PMPC contract information it seeks bears on the costs of providing Priority Mail service, an issue of obvious relevance in this rate proceeding. The Postal Service does not dispute this assertion generally, but argues that some of the information sought has little relevance because it does not bear directly on the Service's costs under the contract. The Service and Emery argue that the incontestably relevant material should be exempted from production on the ground of commercial sensitivity.

Considered in their respective contexts in Library Reference H-235, the redacted version of the contract, most of the requested categories of information evidently are highly relevant to Priority Mail costs. UPS/USPS-T33-44(b) and (c) ask for per-piece price adjustments, and the expected levels of volume on which they are conditioned, for network operations during the contract's ramp-up period; these factors will directly influence costs during a portion of the interim period between the base year and test year, and the first 5 months of the test year, in this case. Subparts (e)-(h) of UPS/USPS-T33-45 request average prices for flats, parcels, outsides, and all shapes for the ramp-up period, separated for pieces with PMPC destinations and those with ADC/AMC destinations. The corresponding subparts of UPS/USPS-T33-47 request the same information for Period 1, which includes most of the test year. When multiplied by the volume data the Service provided in response to subparts (a) through (d) of the same interrogatories, the requested information would yield cost estimates disaggregated by shape for the respective periods. Even the air transport cost elements sought in subparts (m) through (p) of these two interrogatories—which the Service characterizes as mere “artifacts of the contract negotiation process” (Opposition of October 14 at 3), appear in their specific contexts within H-235 to cumulate to a price, each of which corresponds to a specific cost to the Postal Service.

UPS/USPS-T33-48 and -49 request information concerning the Track and Trace component of the services to be provided under the PMPC contract. The “Price Per Piece” figures sought in subpart (a) of each of these interrogatories, when extended by

the requested "Expected Volume Per A/P" estimates in subpart (b) of each, would yield specific cost levels for the ramp-up period and Period 1, respectively. The levels of costs associated with the planned Track and Trace service for Priority Mail are of obvious relevance in this proceeding. While the costs of aviation and diesel fuel to be passed through and paid by the Service under the contract, which UPS/USPS-T33-50 requests, may constitute a minor cost component, they are nonetheless relevant to Priority Mail costs.

UPS/USPS-T33-57 requests unredacted versions of the tables of contents for the PMPC contract and its Attachment 1, the Statement of Work. While it is impossible to anticipate what information the redacted entries may contain, this request is obviously relevant to the content of the PMPC contract, and appears to be reasonably calculated to lead to other evidence which may prove admissible in this proceeding.

Finally, UPS/USPS-T33-58 asks for "that portion of the total price to be paid by the Postal Service under the PMPC contract that relates to test year (FY 1998) operations for the PMPC network." The relevance of this information to Priority Mail costs in this case is self-evident.

It is important to bear in mind that most of the information requested in these UPS interrogatories is relevant to Priority Mail costs not merely in the abstract, but also to actual cost estimates employed by the Postal Service in its direct case. In rolling forward base year costs through the interim period and into the test year, witness Patelunas made adjustments for cost increases, and decreases, resulting from implementation of the PMPC contract. See Library Reference H-12, Ch. V, § b, Field, Unallocated & Transportation Other Programs, rows containing "Priority Redesign"; Id., Ch. V, § g, Non-Personnel Cost Reductions, row labeled "Priority Mail Redesign." In response to a UPS interrogatory not at issue here, witness Patelunas stated that the Service decided to treat the costs of the Phase I PMPC contract "as fully volume variable in the test year because that is the time in which the costs will be incurred, the costs should be associated with Priority Mail and there was no need to rollforward beyond the Test Year 1998." Response of Witness Patelunas to UPS/USPS-T33-36

(redirected from witness Sharkey), Tr. 13/7293. The Postal Service's own treatment of PMPC contract-related costs emphasizes the immediate relevance of such information to this proceeding.

Emery argues that release of this relevant information would cause it substantial competitive harm because disclosure would reveal its costs and pricing strategies. With the exceptions of the passed-through aviation and diesel fuel costs sought in UPS/USPS-T33-50, and possibly the air transportation cost elements requested in T33-45(m)-(p) and 47(m)-(p), I am not convinced that disclosing the prices paid Emery by the Postal Service would necessarily reveal definitive information regarding Emery's costs; those prices may include cost-plus markups to varying degrees. Consequently, only responses to the pertinent parts of these interrogatories merit production under protective conditions for this reason.

However, for other materials, I can more readily accept Emery's alternative theory, that "[t]he price variations reflected in the pricing schedule reflects Emery's experience in the industry and its analysis of costs and profits on the various routes[.]" Emery's Response of October 14 at 3, and that disclosure of these variations to a competitor such as UPS could work to Emery's competitive detriment.

Judged by this standard, the commercial sensitivity of materials responsive to the interrogatories at issue is highly variable. Disclosure of the Postal Service's estimate of the aggregate costs associated with the PMPC contract in the test year would reveal nothing about Emery's pricing strategies; accordingly, the Service shall respond to UPS/USPS-T33-58. Similarly, disclosure of the expected volume figures sought in UPS/USPS-T33-44(b)-(c), -48(b), and -49(b) would reveal neither cost nor pricing information, and responses shall be provided.

The remaining interrogatories at issue request information of greater potential sensitivity. UPS/USPS-T33-45(e)-(h) and -47(e)-(h) requests Emery's average prices disaggregated by shape; while reporting them collectively as UPS requests (not for each origin-destination pair) would tend to mask price variations by route, disclosure could nonetheless reveal Emery's overall pricing strategy for pieces of differing shapes.

The "Price Per Piece" information requested in UPS/USPS-T33-48 and -49 could be used to ascertain Emery's pricing strategy for the Track & Trace service. Finally, the redacted portions of the tables of contents for the contract and the Statement of Work may "reveal important strategic information relating to Emery's proprietary method of responding to government solicitations[.]" and may also compromise the integrity of the Service's procurement process, as the Service argues at 5-6 of its Opposition. In light of the potential sensitivity of these materials, responses shall be made under the protective conditions specified below.

Appropriate Protective Conditions for Sensitive Information. After considering the different sets of protective conditions proffered by Emery and the Postal Service, I have decided to order production under conditions similar to those suggested by the Service. They have been employed in a recent ruling⁹ in which the Postal Service was directed to produce commercially sensitive study results in response to discovery requests of the Association of Alternate Postal Systems, and are adequate to protect both the Service's and Emery's interests.

Section 1. (b) of these protective conditions specify that:

. . . no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to this material. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design or the competitive structuring and composition of bids, offers or proposals.

Emery suggests that the Commission's administration of this protective condition should include the enforcement of requirements that "counsel . . . disclose those lawyers in their firm who cannot represent that they are not involved in making their client's competitive decisions[.]" and also that "consultants provide resumes and disclose the nature of the work and the identity of their clients[.]" Emery's Response of October 14


⁹ Presiding Officer's Ruling R97-1/52, October 23, 1997.

at 7. In my view, these procedures are unnecessary to safeguard the commercially sensitive information to be produced, and would be unduly cumbersome to implement in an expedited proceeding. Accordingly, the attached protective conditions will be implemented by the Commission's Secretary in accordance with the procedures established in Presiding Officer's Ruling No. R97-1/52.

RULING

1. The Motion of United Parcel Service to Compel Production of Information and Materials, filed October 6, 1997, is granted with respect to Interrogatories UPS/USPS-T33-44(b)-(c), -48(b), -49(b), and UPS/USPS-T33-58.

2. The Motion of United Parcel Service to Compel Production of Information and Materials, filed October 6, 1997, is granted with respect to Interrogatories UPS/USPS-T33-45(e)-(h), (m)-(p), -47(e)-(h), (m)-(p), and 50 subject to the protective conditions attached hereto.


Edward J. Gleiman
Presiding Officer

**ATTACHMENT A: STATEMENT OF COMPLIANCE
WITH PROTECTIVE CONDITIONS**

The following protective conditions limit access to materials provided in response to P.O. Ruling R97-1/62. Individuals seeking to obtain access to that library reference must agree to comply with these conditions, and complete the attached certifications.

1. Only those persons who are either:
 - (a) employees of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) a participant in Postal Rate Commission Docket No. R97-1; or a person employed by such a participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. R97-1; shall be granted access to materials provided in response to P.O. Ruling R97-1/62. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to this material. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design or the competitive structuring and composition of bids, offers or proposals.
2. No person granted access to materials provided in response to P.O. Ruling R97-1/62 is permitted to disseminate those materials in whole or in part to any person not authorized to obtain access under these conditions.
3. The final date of any participant's access shall be
 - (a) the date on which the Postal Rate Commission closes the evidentiary record in Docket No. R97-1; or
 - (b) the date on which that participant formally withdraws from Docket No. R97-1; or
 - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. R97-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel in Docket No. R97-1 of the

termination of any such business and consulting arrangement or retainer or affiliation which occurs before the closing of the evidentiary record.

4. Immediately after the Commission issues its recommended decision in Docket No. R97-1, a participant (and any person working on behalf of that participant) who has obtained a copy of materials provided in response to P.O. Ruling R97-1/62 shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
5. The duties of any persons obtaining access to materials provided in response to P.O. Ruling R97-1/62 shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
6. All persons who obtain access to materials provided in response to P.O. Ruling R97-1/62 are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially-sensitive, and privileged information.
7. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in response to P.O. Ruling R97-1/62 filed in Docket No. R97-1.
8. The duty of nondisclosure of anyone obtaining access to materials provided in response to P.O. Ruling R97-1/62 is continuing, terminable only by specific order of the Commission.
9. Any Docket No. R97-1 participant or other person seeking access to materials provided in response to P.O. Ruling R97-1/62, by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to materials provided in response to P.O. Ruling R97-1/62 in Docket No. R97-1 has been authorized by the Commission.

The copy obtained is marked on every page with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. R97-1.

I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence the materials obtained from the Commission in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

Pursuant to the Certification which I previously filed with the Commission with respect to information received in accordance with Presiding Officer's Ruling R97-1/62, on behalf of myself and/or the party which I represent (as indicated below), affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period those materials have been in my possession. Further, I have complied with all conditions, and have maintained in strict confidence the materials obtained from the Commission in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. R97-1.
3. I have returned the information to the Postal Rate Commission.
4. I have surrendered to the Postal Rate Commission/destroyed all copies of the information which I obtained or which have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____